

63S9CILC.txt

1 63S9CILC Conference 1  
1 UNITED STATES DISTRICT COURT 1  
2 SOUTHERN DISTRICT OF NEW YORK 2  
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3 MARIA FAUSTA CILLI, ET AL.,  
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4 Plaintiffs,  
4

5 v. 5 04 CV 6594 (TPG)  
6 THE REPUBLIC OF ARGENTINA,  
7 Defendant.  
8 -----x

9 New York, N.Y.  
9 March 28, 2006  
10 3:00 p.m.

10 Before:  
11

12 HON. THOMAS P. GRIESA,  
13

District Judge

14 APPEARANCES

14 DREIER

15 Attorneys for Plaintiffs  
15 BY: JOEL A. CHERNOV  
16 REGINA M. ALTER  
16

17 CLEARY GOTTLIEB STEEN & HAMILTON  
17 Attorney for Defendant  
18 BY: CARMINE BOCCUZZI  
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v

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Conference

2

1 (In open court)  
2 THE COURT: What do we need to cover today?  
3 MR. CHERNOV: Your Honor, Joel Chernov on behalf of  
4 the plaintiffs.

5 We're here in connection with your Honor's recent  
6 ruling in connection with the Cilli action, and I sent your  
7 Honor a letter asking to be heard; twofold, your Honor.  
8 There's a statement in -- one, your Honor required that the  
9 plaintiffs in this action provide proof of when they acquired  
10 their bonds and that was something that your Honor said would  
11 not be required when we were at the September 28 hearing and  
12 Mr. Blackman said he wouldn't require it on behalf of the  
13 Republic.  
14

THE COURT: If I got it confused, I'm sorry.  
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 16 MR. CHERNOV: Your Honor, what was said -- I can tell  
 17 you what was said at the hearing. Mr. Blackman said as to the  
 18 pending motions, what I said when we had our meeting two weeks  
 19 ago -- I have the transcript from the September 28 hearing your  
 20 Honor and --

21 THE COURT: What were we hearing?

22 MR. CHERNOV: We were hearing at that point the  
 23 question of whether your Honor was going to require that the  
 24 Republic waive their standing argument, the argument that the  
 25 beneficial bond holders did not have standing; or whether you  
 were going to require the bond holders to obtain authorization

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 2 from the depository trust company before maintaining their  
 3 suits.

4 THE COURT: My recent decision.

5 MR. BOCCUZZI: Your Honor, I have an extra one. Would  
 6 you like mine? It's clean.

7 MR. CHERNOV: On September 28, your Honor, we were  
 8 addressing that standing issue if you might recall.

9 And what the court determined at the conclusion of the  
 10 hearing was that if the Plaintiffs proved their ownership  
 11 satisfactorily to the Court, the Republic would waive its  
 12 standing defense.

13 And it was agreed that for motions going forward, the  
 14 proof that the court would require would be a current account  
 15 statement and proof of purchase of the securities or proof that  
 16 the plaintiffs had those securities in their accounts --

17 THE COURT: Can we start again. I didn't have in my  
 18 hand my recent decision. Just start again, if you don't mind.

19 MR. CHERNOV: Not at all, your Honor. What I was  
 20 saying was at the September 28 hearing we were addressing the  
 21 question of the proof that Plaintiffs needed to come forward  
 22 with in order for the Republic to waive its standing argument,  
 23 the argument that the beneficial bond holders needed to get  
 24 authorization from the depository trust company.

25 And on September 28 your Honor said that for all  
 motions going forward your Honor would require two things, a

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 2 current account statement or other proof of current ownership  
 3 and proof of when they acquired their bonds, proof of when the  
 4 plaintiffs either bought them, or if they didn't have that  
 5 proof, proof that they had the bonds in their account at the  
 6 time that the Republic defaulted, December, 2001.

7 That's what your Honor said we would require going  
 8 forward.

9 THE COURT: For future motions.

10 MR. CHERNOV: Correct.

11 But what we also said was that for all pending motions  
 12 we would not be required to go back and supplement --  
 13 automatically supplement the record.

14 And at that point what we had provided your Honor was  
 15 account statements, current account statements. We had not  
 16 provided your Honor with proof of purchase. And for that  
 17 proposition, I have the transcript from the hearing on  
 18 September 28 and that's annexed to my letter. And if you look  
 19 at page 30 and 31 of that you can see, on page 30 of the  
 transcript, Mr. Blackman said in the middle of the page: "And

20 as to the pending motions, what I have said when we had our  
 21 meeting two weeks ago was that we would look at it on a  
 22 case-by-case basis, which we'll do and see which ones we have.  
 23 We want to see the confirms or other issues. We'll do it."  
 24 And I believe what he was saying was that for the pending  
 25 motions if they believed they needed to see a confirmation,  
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 2 they would let us know.

3 Your Honor then stated in response to Mr. Blackman --  
 4 THE COURT: What page are you on?

5 MR. CHERNOV: Page 30, your Honor.

6 At the bottom your Honor says if everything is in  
 7 order, and I'm reading from your Honor's statement that begins  
 8 on line 22, "If everything is in order, according to the  
 9 standards I've used on pending motions, what I'm going to do is  
 10 to grant the motion, assuming everything is in order, subject  
 11 to my possible need to supplement the record in accordance with  
 12 what has been stipulated today. So they will not be held up  
 13 and we will not -- there will be no need to automatically go  
 14 back and supplement the record."

15 Based on that, your Honor, we did not -- based on this  
 16 statement by Mr. Blackman and the statement by the court, we  
 17 did not go back and supplement the record in the Cilli action  
 18 and provide your Honor with proofs of purchase. And we  
 19 represent the plaintiffs in --

20 THE COURT: I take it this was a pending motion.

21 MR. CHERNOV: This was a pending, fully submitted at  
 22 the time of this hearing, yes, your Honor. And we have six  
 23 other cases that are pending, still pending, your Honor, and  
 24 that have been pending for the longest -- more than two years  
 25 now. And that's our concern, is we do not want to have to go  
 back to plaintiffs, who have had motions sitting for such

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 2 significant amounts of time, and now tell them we need more  
 3 documents.

4 These are foreigners, your Honor. These are  
 5 Argentinians, Italians. Already they're losing confidence in  
 6 the system, in the fact that they don't understand why they  
 7 don't have a judgment yet. For me to go back and say we need  
 8 to now get more documents from you, your Honor, we submit is  
 9 not in accordance with what was agreed and is not fair.

10 Now your Honor said --

11 THE COURT: I would think -- what does the Republic  
 12 say?

13 MR. BOCCUZZI: Good afternoon, your Honor.

14 THE COURT: Do you agree?

15 MR. BOCCUZZI: As I understood the letter that  
 16 Mr. Chernov submitted for today's conference, he had put  
 17 forward three requests or statements to the court and we were  
 18 in agreement with them.

19 One, that plaintiffs said they were prepared to give  
 20 the proof of purchase for these folks, and we said that's fine.

21 Two, they said they would just attach them to a  
 22 declaration, a lawyer's declaration as opposed to making people  
 23 swear new declarations, and I said we were fine with that.

24 And three, they wanted to submit to the court a motion  
 for reconsideration that they shouldn't have to, I guess in

25 other cases, put in proof of purchase. And they set a date for  
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2 that, and I said that was fine as well.

3 I think to the extent your Honor's opinion says that  
4 the need for proof of purchase is driven by the deal that was  
5 struck on September 28, I think that is part correct and part  
6 incorrect in that we all agreed that would be a case-by-case  
determination.

7 I don't think the issue that your Honor identifies,  
8 the need to identify when interest begins to run is precisely  
9 correctly stated.

10 However, I do think there is an issue in having to  
11 prove that they own the bond as of the date they accelerated.  
12 Because when you accelerate the bond, that is when you say I  
13 get principal and interest as of that date and then you --  
14 plaintiffs have said and the way the judgments have come out in  
15 this case, you get the statutory interest based on that date  
16 forward in addition to the principal and interest.

17 In this case, the complaint and acceleration were in  
18 August, 2004 --

19 THE COURT: Let me just interrupt you. Look, I have  
20 handed down a bunch of decisions and I think that I have had  
21 reference to this September 28 conference before. I'll confess  
22 I really didn't understand what we agreed to and I didn't  
23 really completely understand the significance of whether  
24 somebody was an owner as of December 24, 2001 or exact -- or  
25 some later point or some earlier point. And so in working on

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2 this decision, I said I've got to put down something that will  
3 make sense to me, and I guess it wasn't very successful, but at  
4 least it made some sense to me to think of possible -- a  
5 possible relation to the calculation of interest. Now,  
6 apparently that is not completely accurate.

7 What I think we ought to do, frankly, is to do this --  
8 the problem is there was an appeal and the court of appeals  
9 said what it said and the Republic came down from the court of  
appeals with a -- with certain rights about standing.

10 Now, what we did after that was recognize that despite  
11 getting that wonderful opinion from the court of appeals, it  
12 would be preposterous to really take it seriously because if  
13 the -- if the actual owners of the bonds were to insist that  
14 they only -- they were the only people that had standing, they  
15 would have to come in -- they would have a fiduciary obligation  
16 to sue, and they weren't going to do that. So all of this was  
17 a total waste of time.

18 Now, what we ought to do is to do something that  
19 simplifies all of this. And as far as I'm concerned, all that  
20 should be shown is current ownership. And frankly, I don't  
21 think we should be bothered about whether there was ownership  
22 as of December 24 -- whatever it is, 2001, or whether they  
23 bought later. And I don't think we should be worried about  
24 Mr. Blackman saying I'll take it on a case-by-case basis. You  
25 see that -- in writing my decision that I just came out with, I

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1 didn't feel that it was terribly clear what was agreed to on  
2 September 28. But it ought to be clear, and what should be --  
3 there should be standing if the person owns the interest as of  
4 the time he sues or if it's a class action there might be  
5 another relevant time, and that should establish standing.

6 Now, if at a later point, if it ever comes a time when  
7 the judgment -- there is a judgment and it is being enforced,  
8 there may need to be a more refined look at timing to see what  
9 is due in the way of interest and so forth. But all I want to  
10 do now is to eliminate the confusion and I don't think the  
11 September 28 record is terribly clear or as clear as it should  
12 be. It may be clear to you. It wasn't so clear to me. I  
13 don't see -- there should not be anything but complete clarity  
14 as to what constitutes standing and it should be something that  
15 I can use in my decisions. There will be successions of law  
16 clerks and decision after decision over I'm sure a fairly  
17 substantial period of time. It's possible I simply forget what  
18 went on in all of this. And that's the reason it should be  
19 absolutely clear-cut and simple.

20 So I would say that standing is established if  
21 somebody owns the bonds or the interest at the time of suit or  
22 if it's a class action then when -- obviously, the class  
23 representative has to own interest at the time of suit. And as  
24 far as class members, they will have to show ownership as of  
25 some relevant time, but that's for future consideration.

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1 MR. CHERNOV: Your Honor, in light of your statement,  
2 in this decision --

3 THE COURT: And I certainly will -- I really --  
4 despite what I wrote here, I think it's absurd to ask you to go  
5 back and get a lot of additional documents from your clients.

6 MR. CHERNOV: I appreciate that, your Honor. My  
7 question to your Honor is in light of the decision, how would  
8 you like us to proceed?

9 THE COURT: Well I want to hear, Mr. Bocuzzi, is it  
10 satisfactory to simply say there is standing if there is proof  
11 of ownership as of the time of suit?

12 MR. BOCCUZZI: Your Honor, as to that, the  
13 agreement -- and we'll live by the agreement, it was clear from  
14 Mr. Chernov -- I think we're just talking about these cases --  
15 in the Cilli case, if that's how your Honor wants to proceed,  
16 I'm fine with that.

17 THE COURT: I don't want some special rule for the  
18 Cilli case.

19 MR. BOCCUZZI: Well in terms of pending cases.  
20 THE COURT: I don't want some special rule for pending  
21 cases. I wanted to rule, period. And if we have to have  
22 Mr. Blackman come up, I'll have as many hearings as necessary  
23 and you will waste as much of your time and your client's money  
24 as you need to to get a simple rule, but that's what we're  
25 going to get.

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1 MR. BOCCUZZI: Your Honor I'm on board with the simple  
2 rule. I thought the rule we had was simple.

3 THE COURT: It is not.

4 MR. BOCCUZZI: If I may, your Honor, if I can write to  
5 the court either today or tomorrow to confirm.

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6 THE COURT: I want some commitment right now and if  
7 you have to go to the phone, go to the phone. If Mr. Blackman  
8 has to come up, he'll come up. I don't want anymore of this.  
9

10 MR. BOCCUZZI: So what the court is proposing is that  
11 present proof of current ownership --

12 THE COURT: As of the time of suit.

13 MR. BOCCUZZI: -- as of the time of suit brings the  
14 deal -- brings standing.

15 The only thing I would ask your Honor, if they're  
16 acceleration as of the time, if there is a wide gap, can we  
17 have proof as of the time they're accelerating the bond?

18 THE COURT: I don't understand what you're saying.

19 MR. BOCCUZZI: Under the bond documents, a bond holder  
20 decides whether they're accelerating their bond at a certain  
21 time and what happens usually in these cases that you  
22 accelerate your bond saying I want the principal and all  
23 interest going back that's due and then they bring a lawsuit.  
24 If there's a gap between the acceleration and the lawsuit,  
25 here -- and I don't know if this is what your Honor was seizing  
on -- there is no proof that they have the bond when they

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1 accelerated; and obviously, they need to own the bond to  
2 accelerate it. So if there was some gap here as a period of  
3 time, the time of suit is not the same as the time of  
4 acceleration.

5 THE COURT: I don't understand what you're saying.

6 MR. BOCCUZZI: When they send the letter accelerating  
7 the bond, they have -- there is no proof in the record and the  
8 in the Cilli case -- in other cases there is -- that they own  
9 the bond as of that time. And so --

10 THE COURT: As of what time?

11 MR. BOCCUZZI: When they accelerated the bond.

12 THE COURT: Who accelerated?

13 MR. BOCCUZZI: The holder of the beneficial interest.  
14 That's usually what prompts the lawsuit.

15 They send the notice of acceleration saying I am  
16 demanding -- it's the standard acceleration clause, principal  
17 and past interest and then they'll bring a lawsuit when they're  
18 not paid the principal and past interest. Sometimes there's a  
19 gap, as there was here, and I thought this is one of the things  
20 your Honor was getting at. But I see you were more -- take a  
21 step back on September 28, your Honor said there were two  
22 things, the deal as to the standing and your Honor's own  
23 standards as to what you will apply to get comfortable they own  
24 it.

25 If your Honor just wants to look at proof of current  
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1 ownership, that's your Honor's decision and that's how you've  
2 been ruling on these cases. The deal was a separate issue.

3 Here they never proved that they owned the bond as of  
4 the time they accelerated and that has ramifications for CPLR  
5 interest of 9 percent that accrues as of the date of  
6 acceleration.

7 So as I said, in this case, if your Honor wants --

8 THE COURT: Let's suppose an owner of an interest --  
9 and I guess we ought to be precise. We're talking about  
10 interest, right?

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11                   MR. BOCCUZZI: Yes.  
 12                   THE COURT: An owner of interest accelerates, whatever  
 13                   he has to do, and he's accepted, that he does the proper thing,  
 14                   he still owns the bond, he owns the interest, the interest is  
 15                   still marketable, isn't it?

16                   MR. BOCCUZZI: Yes.  
 17                   THE COURT: So he sells it. And so somebody buys it.  
 18                   Doesn't the person who buys take -- subject to the -- every  
 19                   right that the purchaser -- that the seller has?

20                   MR. BOCCUZZI: I believe so, yes, your Honor.

21                   THE COURT: Well then what --

22                   MR. BOCCUZZI: But there the right would be whether  
 23                   you're the person who sold it or the person who bought the  
 24                   interest, you would say I am entitled to principal and  
 25                   accelerated interest as of the date of acceleration and then

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 3                   going forward from that statutory interest as well. But you'd  
 4                   have to show that someone owned the bond and accelerated as of  
 5                   that date.

6                   THE COURT: Well, it seems to me that -- I don't think  
 7                   that problem occurs with your clients, does it?

8                   MR. CHERNOV: No, your Honor, it doesn't. For one --  
 9                   and just to back up a little, if you remember, this whole proof  
 10                   issue to some extent was in lieu of a DTC authorization. A DTC  
 11                   authorization isn't at all necessarily tied into when one  
 12                   accelerates.

13                   Our clients come to us. We, as lawyers, based on our  
 14                   understanding and their proof to us, showing us that they are  
 15                   owner, we accelerate it on their behalf. Never in the four,  
 16                   five years your Honor has had these cases has there ever been a  
 17                   requirement that one of the plaintiffs show ownership as of the  
 18                   date of acceleration.

19                   What your Honor has always required is current proof  
 20                   of ownership, and we've always followed that lead. To go  
 21                   back --

22                   THE COURT: That's what gave -- that's what I was  
 23                   doing and then that -- there was the issue about standing and  
 24                   this appeal.

25                   MR. CHERNOV: But the standing issue and the appeal  
 26                   would not be at all affected -- a DTC authorization just -- and  
 27                   we've obtained those authorizations on behalf of our -- of some  
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 3                   of our clients. We obtained it on behalf of Mr. Applestein  
 4                   when we were before your Honor. That authorization doesn't say  
 5                   that he's an owner as of any particular date. It doesn't say  
 6                   he's the owner as of the acceleration date. There is no  
 7                   connection whatsoever between that authorization and the date  
 8                   of the acceleration.

9                   MR. BOCCUZZI: Just to be clear, your Honor, I wasn't  
 10                   proposing that this is required by the standing deal. I was  
 11                   saying just as a matter of proving up ownership -- the standing  
 12                   is a separate thing. In terms -- and if your Honor is  
 13                   rejecting this, then your Honor has rejected it.

14                   But just in terms of proof to the court of the  
 15                   elements of their claim, that proof that you own the bond when  
 16                   you accelerated, it seems to be that -- I thought your opinion  
 17                   might have been getting at that, but if it was just a confusion

16 over the deal -- 63S9CILC.txt  
17 THE COURT: It really wasn't.  
18 MR. BOCCUZZI: Then I appreciate, your Honor --  
19 THE COURT: Here's what I would think. All the bonds,  
20 other than those which were turned in the exchange offer, are  
21 marketable, right?  
22 MR. CHERNOV: Yes, your Honor.  
23 THE COURT: And if a plaintiff in a case wants to sell  
24 his bonds, he can sell them. Now what it means is that he has  
25 no further cause of action and the new owner would have a cause  
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2 of action.  
3 So what I'm trying to get at is there may be events in  
4 the way of purchases and sales that affect whether somebody has  
5 a cause of action or doesn't have a cause of action. And if  
6 somebody has bought an interest and -- from somebody who did  
7 the -- took the steps to accelerate, it seems to me the  
complaint should allege that.  
8 MR. CHERNOV: Your Honor, none of the plaintiffs --  
9 THE COURT: Let me just finish.  
10 MR. CHERNOV: Sure.  
11 THE COURT: You've got possible ways a cause of action  
12 could shape up and there -- it seems to me that whatever we  
13 establish as far as standing should not try to anticipate every  
14 variation that could arise.  
15 The one thing, it seems to me, that has to be is that  
16 the person has to own the interest at the time they sue. And  
17 presumably if a motion for summary judgment is made and the  
18 court isn't told differently, that same person owns the bond at  
19 the time the motion is made and the time the motion is granted.  
20 And if a judgment is actually entered, if the court doesn't  
21 have any notice to the contrary, it's assumed that the person  
22 still owns the interest; otherwise, he doesn't deserve the  
23 judgment. But all of that is very routine, very standard.  
24 And I go back -- I don't want to be insisting on  
25 something that will lead the Republic to go to the court of  
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2 appeals again and worry the court of appeals about standing,  
3 but I do not see that there is any need for anything other than  
4 ownership at the time of suit to establish standing. And I  
5 think anything else we introduce could cause confusion to  
6 litigants. It could cause confusion to me and, you know, the  
7 law clerks coming on and so forth. And in a way that's what's  
happened here.  
8 There was this complication that, at least in my view,  
9 on the September 28, 2005 hearing, and what I wanted to do  
10 today is to eliminate that.  
11 So what I'm going to do is to say that unless I hear  
12 promptly to the contrary -- and I mean within 24 hours -- it  
13 will be the rule of this court that standing is established,  
14 and proof of standing is established by showing ownership at  
15 time of suit. And the opinion of March 20, 2006 will be -- I  
16 will consider that you're making a motion for reconsideration  
17 and the motion is granted, and I'll issue an amended ruling  
18 accordingly.

19 MR. CHERNOV: Thank you, your Honor.  
20 MR. BOCCUZZI: Your Honor --

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2 the possible circumstances that might arise in this litigation.  
Okay.

3 MR. CHERNOV: Thank you.  
4

4 MR. BOCCUZZI: Thank you.  
5

5 May I ask, going forward in these cases, we have been  
6 now getting proof of purchase provided to us by the plaintiffs,  
7 and again separate and apart from standing.

In terms of the Republic's understanding and the Court's understanding, so we can bring it to your attention if there are permutations, can we continue with the practice where plaintiffs are producing -- not for this case but for future cases where we have been doing it, where they do provide us with that proof of purchase?

Because right now the pleadings, the way they're cast, it just says Mr. X owns a bond. There's nothing about the date they purchased it. There's nothing about in terms of how that relates to acceleration.

18 So if they just provided it, a simple document that  
19 shows when they purchased and then if there's something weird,  
20 that's what litigation is about, we could bring it to the  
21 court's attention.

22 THE COURT: What form do they provide this? As part  
23 of their pleading?  
24

24 MR. BOCCUZZI: You mean the document or the -- right  
25 now they file their complaint. The complaint generally just  
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2 says Mr. X owns a bond. It doesn't talk about when a person  
3 acquired it. Then we serve document demand. They don't  
4 respond. They object to those, and then they make a motion for  
5 summary judgment. And what we see are summary judgment papers  
6 that attach a piece of current ownership, proof of that, if it  
7 is, and then also a proof of purchase.

7 And all I'm saying is since they've gotten into this  
8 mode because of the agreement wherein these cases going  
9 forward, they give us the proof of purchase -- I'm not saying  
10 it's standing, your Honor. I'm just saying why not just keep  
11 having them produce it. There is no reason why they can't

This way if there is some strange way a claim is shaped up, we have some basis to look at it and present it to the court if there is an issue.

THE COURT: In other words, you think that the people are making motions now, they read the September 28 minutes, they are aware of what's required.

9 doing. He's here.  
0  
1 MR. CHERNOV: That's accurate, your Honor. Since  
2 September 28 when we've moved for summary judgment we have  
3 provided the Republic --

THE COURT: On new motions?

4 MR. CHERNOV: New motions. We've provided the  
5 Republic with a current account statement and proof of

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2 acquisition of the bonds.

3 THE COURT: Forget what has been said. What do you  
4 recommend as the format to go forward?

5 MR. CHERNOV: Your Honor, I recommend just what your  
6 Honor found. Current ownership. That's what matters, how  
7 these people acquired it and when they acquired it. If they  
8 acquired it in 1996 or they acquired it in 2001 should not be  
9 required.

10 My feeling is that it often causes the plaintiffs whom  
11 we represent a burden. Not all these people have records --  
12 they don't all do like I do and keep their securities nicely  
13 ordered. They have to go to the brokerage houses. They have  
14 to get them. They have to request them. Some of the brokerage  
15 houses are out of business, and it hasn't been easy for them to  
16 get them.

17 I don't think they serve a useful purpose. I don't  
18 think they should be necessary, but obviously, that was how I  
19 understood your ruling and we acted accordingly.

20 But if you're asking for my statement as to what I  
21 believe should be required, I do not believe they should be  
22 required. I believe that all that is necessary is a current  
23 account statement as your Honor stated and for the reasons your  
24 Honor stated.

25 THE COURT: Let's suppose -- let's just go through  
this. Let's suppose somebody bought the interest before

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2 December 24, 2001, before the default, and still owns that  
3 interest. Now, I take it normally that person would affect an  
acceleration.

4 MR. CHERNOV: Correct, your Honor. What happens is  
5 they retain us and on behalf of the plaintiffs we have then  
6 accelerated, as counsel on their behalf.

7 THE COURT: Okay. And if that happens it's pleaded in  
8 the complaint?

9 MR. CHERNOV: Correct, your Honor.

10 THE COURT: If it hasn't happened, it can't be  
pleaded?

11 MR. CHERNOV: Correct again.

12 THE COURT: And if they have bought before  
13 December 24, 2001, and if there's been an acceleration, then  
14 principal is due and all the unpaid interest is due?

15 MR. CHERNOV: Correct.

16 THE COURT: And that unpaid interest would be whatever  
17 was involved in the original default and going forward, right?

18 MR. CHERNOV: Correct.

19 THE COURT: Now, if somebody buys let's say on  
20 January 1, 2003 and let's suppose the prior owner didn't  
21 accelerate -- the prior owner just held the bond and knew that  
22 the interest wasn't being paid and sold at a discounted value,  
23 that person has a cause of action, right?

24 MR. CHERNOV: Correct.

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2 THE COURT: An owner of the bond still has a contract  
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2 with the Republic and the contract is not being fulfilled.  
 3 Now the person can come to you and come to any  
 4 attorney; and if there's a right to accelerate, there's still a  
 5 right to accelerate?  
 6 MR. CHERNOV: Correct.  
 7 THE COURT: And thus, if that right to accelerate is  
 8 properly exercised, the principal is due and all unpaid  
 9 interest?  
 10 MR. CHERNOV: Correct.  
 11 THE COURT: Going back to December 24, 2001?  
 12 MR. CHERNOV: Exactly.  
 13 THE COURT: Now, if somebody sues -- let's say files  
 14 suit July, 2003, all they have to plead is that -- they have to  
 15 plead ownership, right?  
 16 MR. CHERNOV: Correct.  
 17 THE COURT: If they want to recover principal, they've  
 18 got to plead acceleration, right?  
 19 MR. CHERNOV: Correct.  
 20 THE COURT: And as far as interest, they simply plead  
 21 the interest as unpaid since December 24, 2001?  
 22 MR. CHERNOV: Correct.  
 23 THE COURT: That's their cause of action?  
 24 MR. CHERNOV: Correct.  
 25 THE COURT: And if they move for summary judgment, it  
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 1 seems to me that -- forgetting standing for a minute -- that's  
 2 all they have to show for summary judgment?  
 3 MR. CHERNOV: That's our position, your Honor.  
 4 THE COURT: They have a cause of action.  
 5 If those things are done, they've got a cause -- if  
 6 they bought, there's acceleration and if -- if they bought,  
 7 there's acceleration and of course there was the default, then  
 8 they have a cause of action and they can get summary judgment  
 9 on principal and unpaid interest?  
 10 MR. CHERNOV: Correct, your Honor.  
 11 THE COURT: Just a minute. (Pause)  
 12 Literally -- this was the subject of the appeal -- the  
 13 bond owners have to sue. They have standing. And without  
 14 anything more, although the interest might have a cause of  
 15 action in the sense we've just talked about, it's the bond  
 16 holders who have the authority to sue, correct?  
 17 MR. CHERNOV: Correct.  
 18 THE COURT: Unless they authorize the interest holders  
 19 to sue?  
 20 MR. CHERNOV: Correct.  
 21 THE COURT: That's the technical way it stands?  
 22 MR. CHERNOV: Right.  
 23 THE COURT: Now --  
 24 MR. CHERNOV: That's the question that the court left  
 25 open. The court didn't rule on it and your Honor never ruled  
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 1 on it.  
 2 THE COURT: On what?  
 3 MR. CHERNOV: Whether beneficial bond holders have  
 4 standing to sue under the terms of the physical agency  
 5 agreement.  
 6 I believe the court of appeals -- and I haven't gone  
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7 back and looked at it and I'm sure Mr. Bocuzzi can correct  
 8 me -- I don't know that the court of appeals actually ruled  
 9 that only the depository trust company and its nominee, Cede &  
 10 Co., have standing.

11 I believe what the court ruled was that it wasn't  
 12 sufficiently developed in the record and sent it back to your  
 13 Honor for further consideration.

14 THE COURT: I think that's correct.

15 MR. CHERNOV: I don't know if there was an explicit  
 16 statement by the court.

17 THE COURT: The questions that were left open -- I  
 18 can't remember but they were a little bit not so basic. They  
 19 were a little bit kind of -- but you're technically right, but  
 20 basically the message was that if there wasn't some kind of a  
 21 blanket waiver or something, the structure -- the written  
 22 structure has to obtain.

23 Now it seems to me what should have been done, on the  
 24 remand, when we realized that the bond owners were never in  
 25 this world going to bring suit, what we should have done is to

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 1 say all that's necessary to prove standing and get by that  
 2 point is to show you've got a cause of action. And instead we  
 3 got into this somewhat complicated rigmarole on September 28.

4 Now, I don't want to cause further confusion and  
 5 introduce a change which would cause confusion, but I do not  
 6 think -- these cases keep being brought and so forth, so we've  
 7 got a long road -- a lot ahead of us and it seems to me even  
 8 though there is a change from what was said on September 28,  
 9 2005, it really -- we ought to go back and have it as simple as  
 10 possible. If somebody wants to show the time of purchase when  
 11 they file a motion for summary judgment, they can do that. And  
 12 if there's some agreement between Cleary Gottlieb and  
 13 plaintiff's counsel to do something simply by agreement, they  
 14 can do that.

15 But as far as this court is concerned, it seems to me  
 16 we ought to have a rule that what is necessary to show standing  
 17 is simply to show a cause of action. And that means ownership,  
 18 somebody accelerated, if there's a request for principal, and  
 19 of course the interest follows as simply from the ownership.  
 20 And that's what I'm going to say.

21 And again, I'll assume unless there's an objection  
 22 that I hear about within 24 hours, that's the rule from here on  
 23 out.

24 If, as a matter of some convenience, if counsel for  
 25 plaintiffs and counsel for the Republic want to agree to have  
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 1 other documentation in connection with a motion for summary  
 2 judgment, you can do whatever you want. But I want it as  
 3 simple as possible.

4 So, the motion for reconsideration is granted. And  
 5 the -- a new opinion will be issued amending so much as  
 6 necessary to show that there is the -- the motion is granted.

7 MR. CHERNOV: Thank you, your Honor.  
 8 THE COURT: Thank you.  
 9 (Adjourned)

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